

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 54**

January 13, 2021

**SUMMARY OF BILL:** Makes various changes to requirements under the Underground Utility Damage Prevention Act (UUDPA). Increases certain maximum civil penalty thresholds which may be assessed by the Underground Utility Damage Enforcement Board (UUEB) and the Tennessee Public Utility Commission (TPUC).

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue – Exceeds \$10,000/FY21-22 and Subsequent Years/  
Underground Damage Prevention Fund**

**Increase Local Expenditures –  
Exceeds \$1,000/FY21-22 and Subsequent Years/Permissive**

**Other Fiscal Impact – Local utility systems are required to operated on a self-sufficient basis; therefore, any increase in expenditures will be offset by a corresponding increase in customer rates. Any net impact is estimated to be not significant.**

**The Tennessee Public Utility Commission could experience a decrease in expenditures within the Gas Pipeline Safety Division and an equal, corresponding decrease in federal reimbursement funding of \$800,000 if the maximum civil penalty threshold is not increased.**

*Assumptions relative to the UUDPA:*

- The proposed language:
  - Prohibits utility owners and operators from assessing fees against excavators to recoup expenditures associated with marking requirements within the UUDPA but authorizes such expenditures to be recouped through customer rates assessed by such utility owners and operators;
  - Increases, from \$2,500 to \$10,000, the maximum civil penalty which may be assessed by the UUEB for second and subsequent violations of the UUDPA; and

- Increases, from \$5,000 to \$15,000, the maximum civil penalty which may be assessed by the UDEB for violations of the UUDPA which occurred as a result of gross negligence or willful misconduct.
- Based on quarterly reports of the UDEB for 2020:
  - From January to March, one civil penalty was assessed at \$625, and two were assessed at \$2,500;
  - From April to June, two civil penalties were assessed at \$625, three at \$1,250; and one at \$2,500; and
  - From July to September, four civil penalties were assessed at \$625, one at \$1,250, and one at \$5,000.
- Pursuant to Tenn. Code Ann. § 65-31-108(a)(1)(A), § 7-82-403, and § 7-34-115:
  - Utility operators who are notified of upcoming excavations by other entities are required to stake and mark the location of all its underground utilities; and
  - Municipal utility systems and utility districts are required to be operated on a self-sufficient basis.
- Due to the self-sufficient nature of local utility systems, it is reasonably assumed that any increase in expenditures for local utilities marking the location of utilities is currently being collected through rate increases to customers; therefore, any fiscal impact to such local entities is considered not significant.
- Pursuant to Tenn. Code Ann. § 65-31-117, all civil penalties collected from assessed fines by the UDEB are deposited into the Underground Damage Prevention Fund (UDPF) to be utilized for providing grants to certain utility operators, public awareness campaigns, and compliance training for violators of the UDDPA. No funds within the UDPF revert to the state general fund.
- While the UDEB assesses penalties on a case-by-case basis, it is reasonably estimated that increasing the maximum penalty which may be assessed will result in an increase in the base penalty which will be assessed by the UDEB; therefore, it is reasonably estimated there will be a recurring increase in revenue to the UUPF exceeding \$10,000, beginning in FY21-22.
- Due to the self-sufficient nature of local utility systems, any increase in penalties assessed such systems will be offset by corresponding increases in customer rates; therefore, the net impact in local expenditures for such systems is estimated to be not significant.
- It is reasonably assumed that most penalties are assessed against privately owned entities; however, the proposed language is estimated to result in a permissive, recurring increase in local government expenditures for local entities other than local utility systems which fall under the requirements of the UUDPA. For such local entities it is reasonably estimated that increasing maximum civil penalties which may be assessed by the UDEB will result in a permissive increase in local expenditures exceeding \$1,000 statewide, beginning in FY21-22.

*Assumptions relative to the Gas Pipeline Safety program:*

- The proposed language:
  - Increases, from \$10,000 to \$100,000, the maximum civil penalty which may be assessed per day by the TPUC per violation of any regulation under the Gas Pipeline Safety (GPS) program; and
  - Increases, from \$500,000 to \$1,000,000, the cap on such civil penalties which may be assessed under the GPS program.
- According to the TPUC:
  - The Gas Pipeline Safety Division (GPSD) within the TPUC has state jurisdiction over the enforcement of the Federal GPS program. The GPSD conducts annual inspections of gas utilities across the state to ensure such infrastructure meets safety standards;
  - The GPSD is reimbursed approximately \$800,000 annually by the Petroleum and Hazardous Materials Safety Administration (PHMSA) under the U.S. Department of Transportation for expenditures associated with such inspections;
  - Increases to the GPSD penalty structure are needed in order to stay in compliance with federal regulations. Failure to comply may result in the PHMSA decertifying the program administered by the GPSD;
  - The GPSD assesses civil penalties for safety violations. Under assessment of a civil penalty, the GPSD typically requires the violator to invest in their infrastructure rather than remit the funds to the GPSD in the form of a civil penalty; and
  - In the event a civil penalty is assessed, such funds are deposited with the TPUC and utilized for enforcement of the GPS program.
- Based on information provided by the TPUC, since 2015, the following citations and civil penalties have been issued:
  - In 2015, 117 violations cited, no civil penalties issued;
  - In 2016, 98 violations cited, 10 civil penalties issued;
  - In 2017, 95 violations cited, 3 civil penalties issued;
  - In 2018, 24 violations cited, no civil penalties issued; and
  - In 2019, 9 violations cited; no civil penalties issued.
- Given the extent of decline in the number of violations and civil penalties issued by the GPSD, it is reasonable assumed that compliance with the safety standards within the GPS program is increasing under the current civil penalty structure.
- Due to an increase in compliance under the current civil penalty structure, it is reasonably assumed increasing the maximum threshold of civil penalties allowable under the GPS program will not result in an increase in revenue the TPUC receives through assessment of such civil penalties or a corresponding increase in local expenditures for payment of civil penalties; therefore, any fiscal impact to state and local government is considered not significant.
- If the maximum threshold of civil penalties is not increased, it may result in a decrease of \$800,000 in revenue for the TPUC from the PHMSA and an equal corresponding decrease in expenditures of \$800,000 for the TPUC associated with management of the GPS program.

## **IMPACT TO COMMERCE:**

### **Increase Business Expenditures –Exceeds \$9,000/FY21-22 and Subsequent Years**

#### Assumptions:

- Increases in the maximum civil penalties assessed by the UUEB are estimated to result in increases in expenditures for privately held utility providers and excavators. While the precise increase in penalties assessed against private businesses will vary, it is reasonably estimated to exceed \$9,000 (\$10,000 increase in assessments by the UUEB - \$1,000 local assessments) annually.
- Based on information provided by the TPUC, compliance with safety standards under the GPS program is increasing under the current penalty structure; therefore, increasing the maximum civil penalty threshold is not estimated to result in an increase in the number of civil penalties assessed privately operated utilities.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Bojan Savic, Interim Executive Director

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